

writ of mandamus to have the official redetermine the decision. The other members of the Court (Salmon L.J. and Blain J.) agreed with this.

This case is important in that it suggests that the principles of natural justice which have always been considered to apply only to officials performing a judicial function apply also to other officials; but it does not say what other officials.

(ii) *Audi alteram partem*: *Mayor of Jaffna v. W. J. Fernando* [1967] 3 W.L.R. 289. This was an appeal to the Privy Council from a decision of the Supreme Court of Ceylon. It concerned a petition for writs of certiorari and quo warranto on the ground of a breach of the *audi alteram partem* principle of natural justice. The judgment of the Judicial Committee delivered by Lord Upjohn is interesting in that he outlined three matters which must always be borne in mind when considering whether the principle should be applied or not. They are: first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of justice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved what sanctions in fact is the latter to impose upon the other.

(iii) Justice must manifestly be seen to be done: *R. v. Consett Justices, Ex parte Postal Bingo Ltd.* [1967] 2 W.L.R. 184. This was an application for a writ of certiorari to quash three convictions by the justices. The general ground for the application was that justice was not manifestly seen to be done in that the decision of the justices did not appear to be a decision of the justices alone but of the justices together with their clerk. The Court unanimously held that although the clerk could advise the justices only on questions of law and not of fact the questions were so entangled in this case that the retirement of the clerk with them throughout was not sufficient to invalidate their decision.

(iv) Error of law apparent on the face of the record: *Henderson v. Waipa County, supra*. Section 34A(2) of the Town and Country Planning Act 1953 provides

Whenever any such objectionable element is or becomes removable or reducible by any means that are reasonably available to the user of the land, that use of the land . . . shall be deemed to be conditional on his removing or reducing that element to such extent as is reasonably practicable.

Richmond J. held that the phrases "any means that are reasonably available" and "to such extent as is reasonably practicable" clearly require consideration to be given to questions of finance and the effect on the user of the land and that in so far as the Town and Country Planning Appeal Board did not consider these questions there was an error of law apparent on the face of the record.

M. A. Burns.

## COMMERCIAL LAW

### *Door to Door Sales Act 1967*

This enactment "is aimed not at door to door selling as such, but only at the undesirable practices and pressures that are sometimes applied

in this type of transaction". (Rt. Hon. J. R. Marshall, Minister of Industries and Commerce, *New Zealand Parliamentary Debates* November 14, 1967, p. 4215.)

This Act allows a purchaser who has signed a credit agreement at a place other than the appropriate trade premises, the right to cancel the agreement at any time within seven days of the day after the making of the agreement. For an analysis of the Act, see Flitton, (1968) 4 N.Z.U.L.R. 86.

Legislation of the same type has been enacted in the United Kingdom, the Australian states of Western Australia and Victoria and the Canadian provinces of Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and Saskatchewan.

Comparison with United Kingdom Legislation: The New Zealand Act largely follows the form and content of the Hire Purchase Act 1965 (U.K.) but departs from it in some major respects.

The New Zealand Act applies to credit agreements which are defined as being:

any credit sale agreement [which is an agreement for the sale of goods under which the total purchase price is not paid in full at, or before, the time at which the agreement is made], hire purchase agreement, or hiring agreement under which the vendor sells, lets, hires or bails the goods that are the subject of the agreement in the ordinary course of business carried on by him; . . .

It does not include any agreement under which the purchaser is a body corporate, or a person engaged in buying and selling goods of a similar description to those the subject of the agreement, or a person who carries on a business or profession if the goods are normally used in the carrying on of that business or profession, or any credit sale agreement of less than forty dollars or any other agreement for less than twenty dollars (s. 2(1)).

The United Kingdom Act applies to all hire purchase agreements under £2,000 and to credit agreements of over thirty pounds and under £2,000, a credit agreement being defined as: "an agreement for the sale of goods under which the purchase price is payable by five or more instalments, not being a conditional sale agreement", (s. 1). Thus, if the buyer can be persuaded to pay the price by less than five instalments the Act does not apply. Also, as the Act is not limited to dealers in the goods it therefore includes agreements between individuals not engaged in a trade.

The New Zealand Act is limited to agreements made otherwise than at the appropriate trade premises (s. 5(1)) which are those premises at which the vendor normally carries on business, or at which goods of a similar description are normally offered for sale (s. 2(1)). But if the agreement is initiated at the request of the purchaser, no matter where it is subsequently completed, the agreement does not come under the Act (s. 11).

The United Kingdom Act similarly defines appropriate trade premises (s. 58(1)) but has no exempting provision in respect of sales initiated by the purchaser and extends to agreements signed anywhere other than at the appropriate trade premises, which could deprive a reputable merchant of what would otherwise be a sale when he allows a prospective purchaser to take the agreement away with him to study. If he signs it before he returns, and the form is not as prescribed for extra-premises sales the owner or seller is not entitled to enforce the agreement and in the case of a hire purchase or conditional sale agreement